

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                                    |   |                         |
|------------------------------------|---|-------------------------|
| WILLIE TAMAKLOE,                   | ) |                         |
|                                    | ) |                         |
| Petitioner,                        | ) |                         |
|                                    | ) | CIVIL ACTION NO. 06-27J |
| v.                                 | ) |                         |
|                                    | ) | JUDGE GIBSON            |
| JOHN YOST, Warden, F.C.I. Loretto, | ) |                         |
|                                    | ) |                         |
| Respondent.                        | ) |                         |

**Memorandum Order**

**GIBSON, J.**

This matter comes before the Court on the Petitioner's Motion to Strike Magistrate Judge's Rule and Order (Document No. 10).

The Petitioner argues that the Magistrate Judge's Order denying him an expedited hearing is not within his power as it is a dispositive ruling and that his present circumstances require issuance of the writ of habeas corpus and an expedited hearing.

The issuance of the Rule and Order by the magistrate judge conforms with the long followed practice in habeas corpus proceedings where it is found that "upon the face of the petition, it appears that the party is not entitled to the writ, the court may refuse to issue it," but this refusal does not affect any of the petitioner's "substantial right[s]" and allows the court to evaluate the facts and determine if an issue of fact exists. *Walker v. Johnston*, 312 U.S. 275, 284, 61, S.Ct. 574, 578, 85 L.Ed. 830, 834-835 (1941). It is apparent that Magistrate Judge Pesto found that the petition did not merit immediate issuance of the writ when he issued the Rule and denied an expedited hearing. This was not a

dispositive order as the petition has not been dismissed or acted upon by this Court.

As for Magistrate Judge Pesto's statutory ability to initially review petitions for writs of habeas corpus, this act is clearly within his power as he has been referred this matter by this Court and this Court retains jurisdiction to make de novo review of magistrate judge decisions and most importantly, the exclusive jurisdiction to enter a final judgment. *See Garcia v. Boldin*, 691 F.2d 1172 (5<sup>th</sup> Cir. 1982).

Therefore, to the extent that the Petitioner's motion can be considered an appeal of the magistrate judge's decision to deny expedited proceedings in this matter, the Court agrees with the magistrate judge as the Court's review of the face of the petition reveals that the petition does not warrant such action. The Petitioner's motion is denied.

**AND NOW**, this 9<sup>th</sup> day of August 2006, this matter coming before the Court on the Petitioner's Motion to Strike Magistrate Judge's Rule and Order (Document No. 10), IT IS HEREBY ORDERED THAT the Motion is DENIED.

**BY THE COURT:**

A handwritten signature in black ink, appearing to read "Kim R. Gibson". The signature is written in a cursive, flowing style.

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**KIM R. GIBSON,  
UNITED STATES DISTRICT JUDGE**